IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 22034 of 2004

Between:

SMT. KESINENI PADMA, w/o. RAMA RAO,
R/o. Chinnapavani Village, Lingasamudram Mandal,
Prakasam District.

..... PETITIONER

AND

1 The District Collector (PT WING) Ongole, Prakasam District.
2 The District Panchayat Officer, Ongole, Prakasam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 1st respondent herein in initiating proceedings bearing RCC No. 1281/2004(pts) A-1 dt. 16-10-2004 simultaneously without disposing of the appeal filed by the petitioner herein against the proceedings bearing RCC NO. 1281/2004(pts) /A1 dt. 25-9-2004 as arbitrary illegal capricious and violative of fundamental rights guaranteed under Art 14 of the Constitution of India and consequently direct the 1st respondent herein to dispose of the appeal pending before him before proceeding under Section 249(6) of AP Panchayat Raj Act.

Counsel for the Petitioner:MR.SAI GANGADHAR CHAMARTY

Counsel for the Respondents: GP FOR PANCHAYAT RAJ & RURAL DEV.

The Court at the stage of admission made the following :

ORDER:

The present writ petition is filed questioning the show cause notice dated 16-10-2004, issued by first respondent calling upon the petitioner to show cause as to why he should not be suspended from the post of Sarpanch for a period of three months.

On the ground of alleged irregularities committed by the petitioner, the second respondent issued notice dated 25-9-2004, under Rule 42 (1) of the Rules issued in G.O. Ms. No. 30 PR, dated 20-1-1995, to show cause as to why he should not be prohibited from withdrawing the funds of the Gram Panchayat. The petitioner states that he submitted his explanation to the said notice, and also filed an appeal along with an application for grant of stay of the said order before the first respondent on 4-10-2004.

The learned counsel for petitioner submitted that alleging certain irregularities the second respondent issued the impugned notice dated
25-9-2004, to which the petitioner had also submitted his explanation on 1-10-2004. The petitioner against the impugned notice, had also preferred an appeal to the first respondent on 4-10-2004 together with an application for grant of interim stay of the impugned order. It is the case of the petitioner that the second respondent had not passed any orders on the explanation submitted by him to the show cause notice dated 25-9-2004, and likewise, the first respondent has also not passed any orders in the appeal filed by him against the notice issued by the second respondent. While the matters stood thus, it is the grievance of the petitioner, that the first respondent issued notice dated 16-10-2004, calling upon him to show cause as to why he should not be suspended from the post of Sarpanch for a period of three months, which is illegal and arbitrary.

Heard the learned counsel for petitioner and the learned Government Pleader for Panchayat Raj. Both counsel agreed for disposal of the writ petition at the stage of admission.

Though the petitioner is said to have submitted his explanation to the notice dated 25-9-2004, the second respondent has not passed any orders thereon. The petitioner is said to have also filed an appeal before the first respondent against the notice issued by the second respondent. Unless and until a decision is taken on the explanation submitted by the petitioner to the notice dated 25-9-2004, issued by the second respondent, it is not proper on the part of the first respondent to issue the impugned notice dated 16-10-2004, calling upon the petitioner to show cause as to why he should not be suspended for a period of three months, and more so when the appeal filed by the petitioner against the notice issued by the second respondent, is pending before him.

In the above view of the matter, the writ petition is disposed of with the following directions:

Since the petitioner is said to have already submitted his explanation to the notice dated 25-9-2004, the second respondent shall consider the same and pass appropriate orders thereon, in accordance with law. If any adverse order is passed against the petitioner by the second respondent, he is at liberty to assail the same before the first respondent. In view of this, the appeal proceedings before the first respondent, initiated by the petitioner, against the notice dated
25-9-2004, issued by the second respondent, would be of no consequence. Inasmuch as without taking any action of the explanation submitted by the petitioner to the notice dated 25-9-2004, the first respondent has issued the impugned notice dated 16-10-2004, the same cannot be sustained, and the same is accordingly set aside.

The writ petition is accordingly disposed of. No costs.

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N.V.RAMANA,J

1-12-2004

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To,

1 The District Collector (PT WING) Ongole, Prakasam District.
2 The District Panchayat Officer, Ongole, Prakasam District.

3.2CCs to G.P.for Panchayat Raj & Rural Development, A.P.High Court Buildings, (OUT).

2.2CD copies

*Form-NIC-OGS/WP{**RLD**}*

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THE HON'BLE MR JUSTICE N.V. RAMANA

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Date: 1-12-2004